Lambeth Corporation *and* Amalgamated Clothing and Textile Workers Union Local 1124T, AFL–CIO. Case 1–CA–29252

November 30, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

Upon a charge filed by Amalgamated Clothing and Textile Workers Union Local 1124T, AFL–CIO (the Union) on March 31, 1992, and an amended charge filed by the Union on May 22, 1992, the General Counsel of the National Labor Relations Board issued a complaint on June 24, 1992, against Lambeth Corporation (the Respondent) alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file a timely answer.

On August 10, 1992, the General Counsel filed a Motion for Summary Judgment. On August 12, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. On August 26, 1992, the Respondent filed a motion to file answer late in which it stated that it had filed for Chapter 11 Bankruptcy protection in March 1992 and had only recently retained counsel.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated July 21, 1992, the counsel for the General Counsel notified the Respondent that unless an answer was filed by July 28, 1992, a Motion for Summary Judgment would be filed. No answer was filed by that date. On August 26, 1992, the Board received a motion to file answer late in which the Respondent states that it had filed for Chapter 11 protection under the United States Bankruptcy Code in March 1992 and had only recently retained counsel.

In the absence of good cause being shown for the failure to file a timely answer to the complaint, we grant the General Counsel's Motion for Summary Judgment.[1]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in New Bedford, Massachusetts, is engaged in the manufacture of elastic bands in New Bedford, Massachusetts, where it annually purchased and received products, goods, and materials valued in excess of $50,000 directly from points outside the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Unit and the Union's Representative Status*

The following employees of the Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance workers, except for office and clerical workers, executives, supervisors and any other supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action.

At all material times the Union has been the designated exclusive collective-bargaining representative of the employees in the unit and has been recognized as the representative by the Respondent. The Respondent has been a party to successive collective-bargaining agreements since the 1950's, the most recent of which was effective from April 29, 1991, to April 26, 1992. By virtue of Section 9(a) of the Act, the Union is the exclusive representative of the unit employees for the purposes of collective bargaining, concerning rates of pay, wages, hours of employment, and terms and conditions of employment.

[1] We find that the Respondent has not shown good cause for its failure to file a timely answer and accordingly we shall deny the Respondent's motion to file answer late. To the extent that the Respondent's motion contends that its filing for bankruptcy establishes good cause for its failure to timely file an answer to the complaint, we reject the Respondent's position. See *Aquaculture Products*, 302 NLRB No. 97, slip op. at 4–5 (Apr. 18, 1991). It is well settled that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. Board proceedings fall within 11 U.S.C. § 362(b)(4) and (5), the exception to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. *Phoenix Co.*, 274 NLRB 995 (1985).

B. *The Violations*

The collective-bargaining agreement described above contains provisions that require the Respondent to pay accrued vacation pay pursuant to the provisions of the agreement. These provisions of the collective-bargaining agreement concern mandatory subjects of bargaining. Since about January 27, 1992, the Respondent has failed to continue in effect all the terms and conditions of the collective-bargaining agreement. The Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees. By these acts and conduct, the Respondent has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

CONCLUSION OF LAW

By failing to continue in full force and effect the terms and conditions of its collective-bargaining agreement with the Union by failing to pay accrued vacation pay, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to make the contractually required payments that it unlawfully failed to make. The Respondent shall make such payments with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Lambeth Corporation, New Bedford, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively and in good faith with Amalgamated Clothing and Textile Workers Union Local 1124T, AFL–CIO, by failing and refusing to continue in full force and effect the terms and conditions of its collective-bargaining agreement with the Union by failing to make contractually required payments of accrued vacation pay.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Adhere to the terms and conditions of its collective-bargaining agreement with the Union, including, but not limited to, its provision governing accrued vacation pay.

(b) Remit to the unit employees their accrued vacation pay in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying all payroll records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its facility in New Bedford, Massachusetts, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Amalgamated Clothing and Textile Workers Union Local 1124T, AFL–CIO as the exclusive bargaining representative of the employees in the appropriate unit set forth below by failing to pay accrued vacation pay as provided in our 1991–1992 collective-bargaining agreement with the Union. The unit is:

> All production and maintenance workers, except for office and clerical workers, executives, supervisors and any other supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL adhere to the terms and conditions of our collective-bargaining agreement with the Union, including, but not limited to, its provisions governing vacation pay.

WE WILL make whole unit employees by making all accrued vacation pay payments with interest that we have unlawfully failed to make.

LAMBETH CORPORATION